

Appl. No.: 10/078,612  
Amdt. dated September 26, 2003  
Reply to Office Action of May 28, 2003

REMARKS

In the Office Action dated May 28, 2003, claims 1-13, 15-21 and 27-29 were rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 6,554,064 (Restarick); and claims 14 and 24-26 were rejected under § 103 over Restarick in view of U.S. Patent No. 5,964,296 (Ross).

The § 102(e) date of Restarick is July 13, 2000. As set forth in the Declaration under 37 C.F.R. § 1.131 of Patrick W. Bixenman and James A. Pramann III, and attached Declaration of C. Dale Quisenberry in support of the Rule 131 Declaration, the conception of the present invention occurred prior to July 13, 2000, and the constructive reduction to practice occurred on August 3, 2000 (the filing date of the parent application from which the present application claims priority under 35 U.S.C. § 120). As further set forth in the attached Declarations, there was due diligence from conception to constructive reductive to practice.

In view of the foregoing, Restarick does not constitute prior art under § 102(e).  
Withdrawal of the rejection is respectfully requested.

Applicant also respectfully requests the withdrawal of the obviousness rejections of claims 14 and 24-26 over the hypothetical combination of Restarick and Ross. Because Restarick has been removed as a reference, the obviousness rejection has been overcome. *See* M.P.E.P. § 715.02 (8<sup>th</sup> Ed. Rev. 1), at 700-226 to 700-227 (Feb. 2003) (noting that an Applicant may overcome a § 103 rejection based on a combination of references by showing completion of the invention by applicant prior to the effective date of any of the references).

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Allowance of all claims is respectfully requested. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504 (SHL.0147C1US).

Respectfully submitted,

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